

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1260

United States Court of Appeals

For the Second Circuit.

Bp/s

UNITED STATES OF AMERICA,
Appellee,
against

MICHAEL MOULTRIE,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.

APPELLANT'S APPENDIX.

MARTIN W. ALBERT
Attorney for Defendant-Appellant
840 Grand Concourse
Bronx, N. Y. 10451
(212) LU 5-6600

ROBERT B. FISKE, JR.
*United States Attorney for the Southern,
District of New York*
United States Courthouse
Foley Square
New York, N. Y. 10007



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

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A

DOCKET SHEETS.

MEANS: M/S ☐ 0208 01	Disp/Sentence ☒	S/K/a Midnight	76 1003 U.
FELONY ☒ Misdemeanor ☐	Original Office	(LAST, FIRST, MIDDLE)	U.S. MAG. CASE NO. 76-1011
U.S. TITLE/SECTION 18:1708		OFFENSES CHARGED Possession of stolen mail	ORIGINAL COUNTS 1-32
18:1708		Possession of stolen mail	1-3
18:1708		Possession of stolen mail	1-32

U.S. DISTRICT COURT OF APPEALS
JUL 1 1977
CLERK
SUPERSEDING
COUNTS

II. KEY DATES & INTERVALS		ARREST or		INDICTMENT		ARRAIGNMENT		TRIAL	
U.S. Custody Began *3:30p.m. 8-7-76 Summons Served First Appearance		High Risk Date		Information ☐ 10-29-76		11-11-76		Trial Set For	
		Indict. Waived ☐		Superseding Indict/Info ☐ 12-6-76		11-11-76		Trial Began	
		In Charging District		2-9-77		Final Plea		Trial Ended	

Search Warrant	Issued	DATE	INITIAL/NO.	MAGISTRATE	INITIAL/NO.	OUTCOME
Return	Issued	9/1/76	NG-08AJ	9/1/76	NG-08AJ	DISMISSED
Remanded	Served					HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued						HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT NO. 24
COMPLAINT						
OFFENSE (in Complaint)						

18 USC 1708 - POSSESSION OF STOLEN MAIL

U.S. Attorney or Asst.

Jane Parver
791-1916

ATTORNEYS

Martin W. Albert
840 Grand Concourse
Bronx, N.Y. 10451 585-6600

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
9/1/76		Complaint filed, Legal Aid assigned. Defendant released on his own recognizance.	
10/29/76		Indictment filed, 76 Cr. 1003.....Gagliardi, J.	
11-4-76		Pleading adjourned to 11-11-76.....Cooper, J.	
11-11-76		Deft. (atty. Martin W. Albert present) waives reading of indictment. Deft. pleads not guilty. R.O.R. Assigned to Bonsal, J. for all purposes.....Cooper, J.	
11-16-76		Filed notice of appearance of atty. Martin W. Albert.	
12-6-76		Filed Superseding Indictment & referred to Bonsal, J.Motley, J.	
01-20-77		Filed def't's notice of motion re: suppress and for a bill of particulars.	
01-25-77		Filed Gov't's memo. of law re: opposition to def't's motion to suppress certain evidence.	
2-9-77		Filed Superseding Indictment & referred to Bonsal, J.Tennay, J.	

BEST COPY AVAILABLE

B

DOCKET SHEETS

OPPOSITE THE APPLICABLE DOCKET ENTRY, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER TO USC § 3161

IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUDABLE DELAY			
DATE	DOCUMENT NO.	Internal Number (a)	Excl. Date (b)	LP Code (c)	Total Days (d)	Days (e)	Days (f)
02-15-77	Hearing held on motion to suppress. Decision reserved. Bonsal, J.	2	2-15	E	1		
02-23-77	Filed Govt's post hearing memo. in opposition to defts' motion to suppress certain evidence.		2-28	G	13		
02-23-77	Filed deft's memo. of law re: statement of facts.						
02-28-77	Filed memo-end on entry docketed 01-20-77 re: deft Moultrie's motion to suppress is denied. BONSAL J. m/n						
02-28-77	Filed deft Moultrie's memo in reply to the Govt's memo. in opposition.						
03-15-77	Filed deft's notice of motion to suppress testimony identifying the deft. ret: 3-29-77.						
03-31-77	Filed memo-end. on motion docketed 3-15-77. Motion denied after hearing. Bonsal, J. m/n						
04-01-77	Filed Govt's requests to charge.						
03-30-77	Jury Empanelled. Trial begun before Bonsal, J.						
03-31-77	Trial contd.						
04-01-77	Trial contd. Both sides rest. Motions denied. Summations by counsel charge by the Court. Marshal's sworn. Jury verdict: Deft. guilty cts. 16-32. Jury polled. Pre-sentence report ordered. May 25, 77 set for sentence. Deft. R.O.R. Bonsal, J.						
4-11-77	Filed transcript of record of proceedings, dated 2-15-77.						
5-31-77	Filed transcript of record of proceedings, dated 3-30-77.						
06-01-77	Filed Notice of Appeal by deft to the U.S.C.A. from the Judgement entered 06-01-77. m/n to deft Atty. & U.S. Atty.						
06-01-77	Filed Judgment (ATTY Martin Albert) deft is sentenced to 18 months impr. on cts. 1, 4, 6-32 inclusive to run concurrently with each other. Cts. 2, 3, & 5 are dismissed on defts. motion. Original plus 1 superceding indictment nolleed on consent of the govt. The Court recommends deft. to receive psych. treatment. Deft is advised on his right to appeal and is remanded. BONSAL, J. Issued all copies.						

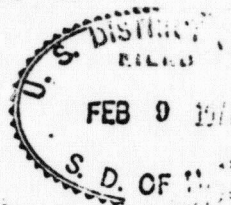
A TRUE COPY
 RAYMOND F. BURCHARDT, Clerk
 BY *[Signature]*
 Deputy Clerk

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

SG:ee
12-558

INDICTMENT FILED FEBRUARY 9, 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

-v-

MICHAEL MOULTRIE,
a/k/a "Midnight",

Defendant.

INDICTMENT

S 76 Cr.

(S) 76 CR 1003

COUNTS ONE AND TWO

The Grand Jury charges:

On or about the 20th day of August, 1976, in the Southern District of New York, MICHAEL MOULTRIE, a/k/a "Midnight", the defendant, did unlawfully, wilfully and knowingly have in his possession the following New York City Social Services checks, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>COUNT</u>	<u>CHECK NO.</u>	<u>ADDRESSEE</u>	<u>DATED</u>	<u>AMOUNT</u>
1	67019469	Ramos Luz 1161 Hoe Ave. Apt. 8 Bronx, N.Y. 10459	Aug. 16, 1976	\$122.00
2	66981710	Acosta Eunice 1051 Kelly St. Apt. 7 Bronx, N.Y. 10459	Aug. 13, 1976	\$209.00

(Title 18, United States Code, Section 1708.)

COUNTS THREE THROUGH FIVE

On or about the 24th day of August, 1976, in the Southern District of New York MICHAEL MOULTRIE, a/k/a "Midnight," the defendant, did unlawfully, wilfully and knowingly have in his possession the following New York City Social Services checks, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted:

INDICTMENT FILED FEBRUARY 9, 1977

SG:ee
12-558

<u>COUNT</u>	<u>CHECK NO.</u>	<u>ADDRESSEE</u>	<u>DATED</u>	<u>AMOUNT</u>
3	67080392	Manuel Cruz 1027 Hoe Ave. Apt. 4C Bronx, N.Y. 10459	Aug. 19, 1976	\$182.50
2 4	67081479	Providenci Cruz 971 Westchester Ave. Apt. 1A Bronx, N.Y. 10459	Aug. 19, 1976	\$181.05
5	67108300	Daily A. For Young Bertha 958 Prospect Ave. Bronx, New York 10459	Aug. 20, 1976	\$ 92.30

(Title 18, United States Code, Section 1708.)

COUNTS SIX THROUGH THIRTY-TWO

The Grand Jury further charges:

On or about the 1st day of September, 1976, in the Southern District of New York, MICHAEL MOULTRIE, a/k/a "Midnight", the defendant, did unlawfully wilfully and knowingly have in his possession the contents of certain letters addressed as follows, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail knowing the same to have been stolen, taken, embezzled and abstracted:

<u>COUNT</u>	<u>ADDRESSEE</u>
3 6	Robinson, George 827 Home St. Bronx, N.Y. 10459
4 7	Hatcher, Johnny 912 Kelly St. Apt. 4A Bronx, N.Y. 10459
5 8	Hughes, Florence 1045 Hoe Avenue, Apt. 1D Bronx, N.Y. 10459
6 9	Perez, Milagros 1060 Kelly St. Apt. D Bronx, N.Y. 10459
7 10	Rodriguez, Maria 854 Intervale Ave. Apt. 8 Bronx, N.Y. 10459

INDICTMENT FILED FEBRUARY 9, 1977

SG:ee
12-558

<u>COUNT</u>	<u>ADDRESSEE</u>
8 11	Price Henderson 1095 Prospect Ave. Apt. 4B Bronx, N.Y. 10459
9 12	Bolden, Clarence 1047 Hoe Ave. Apt. 1 Bronx, N.Y. 10459
10 13	Navarro Isabel 876 Bryant Ave. Apt. 1A Bronx, N.Y. 10474
11 14	Rivera M. for Hernandez I. 854 Intervale Ave. Apt. 14 Bronx, N.Y. 10459
12 15	Christmas Denise 827 Home St. Bronx, N.Y. 10459
13 16	M. Hernandez for Renaldo 1244 Westchester Ave. Apt. 3E Bronx, N.Y. 10459
14 17	Morales Mirtha 1166 Hoe Ave. 1D Bronx, N.Y. 10459
15 18	Rodriguez, Milagros 959 Home Street Apt. 12 Bronx, N.Y. 10459
16 19	Perez Maria 980 Simpson Street Apt. B2 Bronx, N.Y. 10459
17 20	Carreras Margarita 985 Home St. Apt. 15 Bronx, N.Y. 10460
18 21	Hernandez Sofia 941 Intervale Ave. Apt. 4J Bronx, N.Y. 10459
19 22	Mattei Amelia 941 Intervale Ave Apt. 3H Bronx, N.Y. 10455
20 23	Ramos Ana Maria 827 Home St. Apt. 9 Bronx, N.Y. 10459
21 24	Rodriguez Dolores 858 Beck St. Apt. 5 Bronx, N.Y. 10459
22 25	Morales Norma 1288 Hoe Avenue Apt. 5E Bronx, N.Y. 10459

INDICTMENT FILED FEBRUARY 9, 1977

SG:ee
12-558

<u>COUNT</u>	<u>ADDRESSEE</u>
13 26	Perez Pablo 936 Home St. Apt. 17 Bronx, N.Y. 10459
14 27	Martinez Frank 1361 Intervale Avenue Apt. 5D Bronx, N.Y. 10459
15 28	Morales Aida 957 Kelly St. Apt. 32 Bronx, N.Y. 10459
16 29	Flores Rita 1371 Wilkins Ave. Apt. 1E Bronx, N.Y. 10459
17 30	Ortiz Isolina For Julio 1051 Kelly St. Apt. 1 Bronx N.Y. 10459
18 31	Valentin Primitiva 936 Home St. Apt. 7 Bronx, N.Y. 10459
19 32	Nelson Carole 971 Kelly St. Apt. 3B Bronx N.Y. 10456

(Title 18, United States Code, Section 1708.)

Emil M. Hudy
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

By Q207
Deputy Clerk

INDICTMENT FILED FEBRUARY 9, 1977

5

(S) 76 CR 1003

Form No. USA-330-14 (Ed. 9-25-59)

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

MICHAEL MOULTRIE,
a/k/a "Midnight",

Defendant.

INDICTMENT

S 77 Cr.

(18 U.S.C. § 1708.)

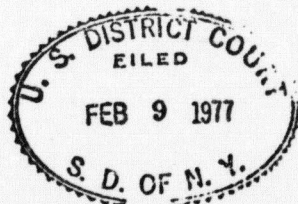
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Emil H. King

Foreman.



BEST COPY AVAILABLE

February 9, 1977 - Filed Indictment. Tenney, J.
& Referred to Bonosal, J. as superseding
Indictment 76 CR 1003.

MAR 30 1977 JURY EMPOWERED, TRIAL BEGON

BONASAL J. fore

MAR 31 1977 TRIAL CONTD

APR 1 1977 TRIAL CONTD. BOTH SIDES REST. MOTIONS

D DENIED. SUMMATIONS BY COUNSEL CHARGE BY THE
COURT. MARSHALS SWORN. JURY VERAICT DEFT.

GUILTY CTS 14, 6-32 JURY POLLED PRE-SENTENCE
REPORT ORDERED. MAY 25 1977 SET FOR SENTENCE
DEFT. R.O.R. BONASAL J.

JUN 1 1977 SENTENCE MICHAEL MOULTRIE (ATTY
D MARTIN W. ALBERT) PRESENT

COMMITTED TO CUSTODY OF ANY GEN FOR IMPRISONMENT
18 MONTHS ON EACH COUNT 1, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, TO RUN CONSECUTIVELY.
COURT RECOMMENDS ~~READ OTHERS~~ PSYCHIATRIC
TREATMENT AS BUREAU OF PRISONS MAY DEEM
ADVISORY. CTS 2, 3, 5. DISMISSED UPON CONSENT
OF GOVT. DEFT. REMANDED SUPERSEDED INDICT-
ADVISED OF RIGHT TO APPEAL BONASAL J. DISMISSED

INDICTMENT FILED DECEMBER 6, 1976.

JWP:par
12-558UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(S) 76 CR 1003

UNITED STATES OF AMERICA

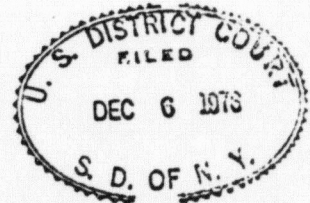
-v-

MICHAEL MOULTRIE,
a/k/a "Midnight",

Defendant.

INDICTMENT

S 76 Cr.

COUNT ONE

The Grand Jury charges:

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66981710	Acosta Eunice 1051 Kelly St. Apt. 7 Bronx, N.Y. 10459	Aug. 13, 1976	\$209.00

(Title 18, United States Code, Section 1708.)

COUNT TWO

On or about the 24th day of August, 1976, in the Southern District of New York MICHAEL MOULTRIE, a/k/a "Midnight," The defendant, did unlawfully, wilfully and knowingly have in his possession the following New York City Social Services checks, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted:

INDICTMENT FILED DECEMBER 6, 1976

JWP:par
12-558

<u>CHECK NO.</u>	<u>ADDRESSEE</u>	<u>DATED</u>	<u>AMOUNT</u>
a. 67080392	Manuel Cruz 1027 Hoe Ave. Apt 4C Bronx, N.Y. 10459	Aug. 19, 1976	\$182.50
b. 67081479	Providenci Cruz 971 Westchester Ave. Apt. 1A Bronx, N.Y. 10459	Aug. 19, 1976	\$181.05
c. 67108300	Daily A. For Young Bertha 958 Prospect Ave. Bronx, New York 10459	Aug. 20, 1976	\$ 92.30

(Title 18, United States Code, Section 1708.)

COUNT THREE

The Grand Jury further charges:

On or about the 1st day of September, 1976, in the Southern District of New York, MICHAEL MOULTRIE, a/k/a "Midnight", the defendant, did unlawfully wilfully and knowingly have in his possession the contents of certain letters addressed as follows, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail knowing the same to have been stolen, taken, embezzled and abstracted:

Robinson, George
827 Home St.
Bronx, N.Y. 10459

Hatcher, Johnny
912 Kelly St. Apt. 4A
Bronx, N.Y. 10459

Hughes, Florence
1045 Hoe Avenue, Apt. 1D
Bronx, N.Y. 10459

Perez, Milagros
1060 Kelly St. Apt. D
Bronx, N.Y. 10459

Rodriguez, Maria
854 Cervale Ave. Apt. 8
Bronx, N.Y. 10459

INDICTMENT FILED DECEMBER 6, 1976

12-558

Price, Henderson
1095 Prospect Ave. Apt. 4B
Bronx, N.Y. 10459

Bolden, Clarence
1047 Hoe Ave. Apt. 1
Bronx, N.Y. 10459

Navarro Isabel
876 Bryant Ave. Apt. 1A
Bronx, N.Y. 10474

Rivera M. for Hernandez I.
854 Intervale Ave. Apt. 14
Bronx, N.Y. 10459

Ch. Atmas Denise
82 Home St.
Bronx, N.Y. 10459

M. Hernandez for Renaldo
1244 Westchester Ave. Apt. 3E
Bronx, N.Y. 10459

Morales Mirtha
1166 Hoe Ave. 1D
Bronx, N.Y. 10459

Rodriguez, Milagros
959 Home Street Apt. 12
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Perez Maria
980 Simpson Street Apt. B2
Bronx, N.Y. 10459

Carreras Margarita
985 Home St. Apt. 15
Bronx, N.Y. 10460

Hernandez Sofia
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Bronx, N.Y. 10459

Mattei Amelia
941 Intervale Ave Apt. 3H
Bronx, N.Y. 10459

Ramos Ana Maria
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Bronx, N.Y. 10459

Rodriguez Dolores
858 Beck St. Apt. 5
Bronx, N.Y. 10459

INDICTMENT FILED DECEMBER 6, 1976

12-558

Morales Norma
1288 Hoe Avenue Apt 5E
Bronx, N.Y. 10459

Perez Pablo
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Martinez Frank
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Morales Aida
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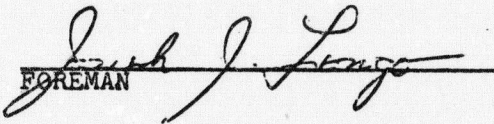
Flores Rita
1371 Wilkins Ave Apt. 1E
Bronx N.Y. 10459

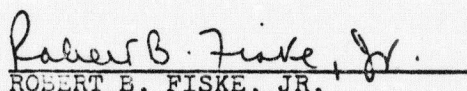
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Bronx N.Y. 10459

Valentin Primitiva
936 Home St. Apt 7
Bronx N.Y. 10459

Nelson Carole
971 Kelly St Apt 3B
Bronx N.Y. 10456

(Title 18, United States Code, Section 1708.)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By 
Deputy Clerk

(S) 76 CR 1003

Form No. 100-222-1 (Ed. 9-15-63)

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

MICHAEL MOULTRIE,
a/k/a "Midnight",

Defendant.

INDICTMENT

S 76 Cr.

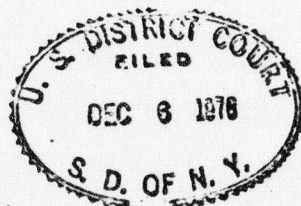
(In violation of Title 18, U.S.C.
§1708.)

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Joseph J. Long
Foreman.



JUN 1 1977 HOLLERED ON CONSENT OF GOVT

P

Bonsal J

10
INDICTMENT FILED DECEMBER 6, 1976

BEST COPY AVAILABLE

INDICTMENT FILED OCTOBER 29, 1976.

JP:isk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CRIM. 1003

UNITED STATES OF AMERICA :

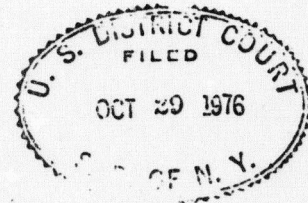
-v- :

INDICTMENT

76 Cr. :

MICHAEL MOULTRIE,
a/k/a "Midnight", :

Defendant. :



The Grand Jury charges:

On or about the 1st day of September, 1976, in the Southern District of New York, MICHAEL MOULTRIE, a/k/a "Midnight", the defendant, did unlawfully wilfully and knowingly have in his possession the contents of certain letters addressed as follows, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail knowing the same to have been stolen, taken, embezzled and abstracted:

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1060 Kelly St. Apt. D
Bronx N.Y. 10459

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854 Intervale Ave. Apt 8
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MICROFILM

JP:isk

INDICTMENT FILED OCTOBER 29, 1976

Price, Henderson
1095 Prospect Ave Apt. 4B
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Christmas Denise
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M. Hernandez for Renaldo
1244 Westchester Ave. Apt 3E
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Bronx N.Y. 10459

Mattel Amelia
941 Intervale Ave Apt 3H
Bronx N.Y. 10459

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Bronx N.Y. 10459

Rodriguez Dolores
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INDICTMENT FILED OCTOBER 29, 1976

JP:isk

Morales Norma
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Nelson Carole
971 Kelly St Apt 3B
Bronx N.Y. 10456

(Title 18, United States Code, Section 1708.)

John R. Lawrence
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, CLERK
BY [Signature]
Deputy Clerk

76 CRIM. 1003

Form No. USA-336-274 (7-1, 9-25-58)

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

MICHAEL WOLTERRE,
a/k/a "Midnight",

Defendant

INDICTMENT

76 Cr.

(19 USC § 1708)

ROBERT B. FISKE, JR.

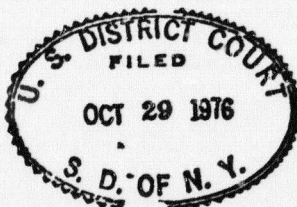
United States Attorney.

A TRUE BILL

John R. Lawren

Foreman.

76 CRIM. 1003



JUDGE BONSALE

10-29-76 - Filed Indictment Naghardig

11-4-76 - Pleading adjourned to R
11-11-76.

Cooper, J.

11-11-76 Entered plea of not guilty. atty. Present
waives reading indictment
Martin W. Albert released on own recognizance
Assigned to Judge Bonsal for all
Purposes.

Cooper, J.
R

FEB 15 1977 HEARING HELD ON MOTION TO SUPPRESS
DECISION REVERSED

BONSAL J. &

~~JUL 1 1977~~ ~~HEARING HELD~~ ~~30 DAYS FOR~~
~~NOTICE~~ ~~NOLED~~ ~~CONSENT OF GOVT.~~
BONSAL J.



JUDGMENT AND COMMITMENT ORDER.

United States of America vs.

DEFENDANT

Michael Moultrie a/k/a "midnight" Southern District of New YorkDOCKET NO. S76 Cr. 1003

JUDGMENT AND PROBATION AND COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
6	1	'77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Martin W. Albert

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE, ☒ NOT GUILTYFINDING &
JUDGMENTThere being a ~~finding~~ verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly have in his possession checks which had been ~~stolen~~ stolen, taken, embezzled and abstracted from and out of the mail, knowing the same to have been stolen, taken, embezzled and abstracted. (Title 18, U.S. Code, §1708.); unlawfully, wilfully and knowingly have in his possession letters which had been stolen, taken, embezzled and abstracted from and out of the mail, knowing the same to have been stolen, taken, embezzled and abstracted. (Title 18, U.S. Code, §1708.)

JUDGMENT AND COMMITMENT ORDER

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **EIGHTEEN (18) MONTHS** on each of counts 1, 4, 6 through 32, inclusive, to run concurrently with each other.

Court recommends that the defendant receive psychiatric treatment as the Bureau of Prisons may deem advisable (RRP)

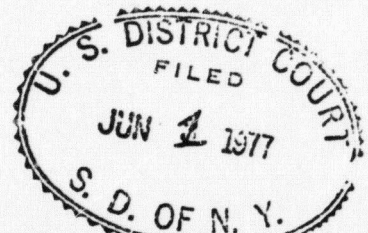
Counts 2,3 and 5 are dismissed on motion of defendant's counsel with consent of the Government.

remanded

advised on right to appeal.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

JUN 1 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Dudley B. Bonsal

Date

6-1-77

BEST COPY AVAILABLE

ENDORSEMENT OF THE DISTRICT COURT, DATED
FEBRUARY 25, 1977.

Endorsement

UNITED STATES OF AMERICA v. MICHAEL MOULTRIE 76 Cr. 1003

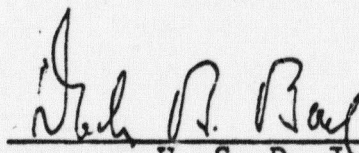
Defendant Michael Moultrie moves to suppress evidence alleged to have been taken from him in violation of his rights under the Fourth Amendment. Moultrie contends (1) that the officer who arrested him on an unrelated state offense lacked probable cause for that arrest, and (2) that the search which uncovered the evidence in question was not conducted incident to his arrest. An evidentiary hearing on this motion was held on February 15, 1977.

The Court finds on the basis of Officer Feis' testimony that the arresting officers had knowledge of facts and circumstances sufficient to warrant a prudent police officer in believing that an offense had been committed and that Moultrie had been involved in its commission. United States v. Edmonds, 535 F.2d 714, 719 (2d Cir. 1976). The fact that this knowledge was based on information supplied by the alleged victim does not detract from its serving as a basis of probable cause. See United States v. Rueda, ___ F.2d ___ (2d Cir., February 10, 1977); United States v. Miley, 513 F.2d 1191, 1204 (2d Cir.), cert. denied, 423 U.S. 842 (1975); United States v. Rollins, 522 F.2d 160 (2d Cir. 1975), cert. denied, 424 U.S. 918 (1976). Accordingly, the Court finds that there was probable cause for Moultrie's arrest.

The precise moment at which an individual is "under arrest" is a question of fact for the court to determine in each case. Sibron v. New York, 392 U.S. 40, 67 (1968). Here it would appear that, although Moultrie was not immediately informed that he was under arrest, his liberty of movement was restricted when the arresting officer first approached him. See Henry v. United States, 361 U.S. 98, 103 (1959). The fact that the search preceded the formal announcement of arrest poses no obstacle to this Court's finding that the search in this case was incident to Moultrie's lawful arrest. United States ex rel. Walls v. Mancusi, 406 F.2d 505, 508-09 (2d Cir.), cert. denied, 395 U.S. 958 (1969); United States v. Manni, 270 F.Supp. 103 (D. Mass. 1967), aff'd, 391 F.2d 922 (1st Cir.), cert. denied, 393 U.S. 873 (1968). Accordingly, the Court finds that the evidence here was lawfully taken from him. United States v. Robinson, 414 U.S. 218 (1973).

For the foregoing reasons, defendant Moultrie's motion to suppress is denied.

Dated: New York, N.Y.
February 25, 1977



U. S. D. J.

FILED

FEB 26 1977

ENDORSEMENT OF THE DISTRICT COURT, DATED
MARCH 30, 1977.

Indictment No. 76 Cr. 1003

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Vs.

MICHAEL MOULTRIE, a/k/a

"Midnight"

Defendant.

MOTION TO SUPPRESS
IDENTIFICATION

ALBERT AND SILVER

Attorneys for Defendant.

Office and Post Office Address, Telephone

840 GRAND CONCOURSE

(BLDG. #1 SUITE 1A)

BRONX, N. Y. 10451

(212) LUDLOW 5-6600

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

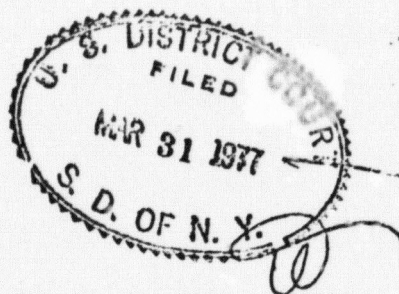
Motion denied after
hearing.

It is so ordered.

March 30, 1977

W. B. Bay

U. S. D. J.



elbr MINUTES, DATED FEBRUARY 15, 1977.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :

v. :

MICHAEL MOULTRIE, :

Defendant. :

Before:

HON. DUDLEY B. BONSAL,

District Judge

New York, February 15, 1977
Room 518 - 3:00 p.m.

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York,
By: SARAH GOLD, Esq.,
Assistant United States Attorney

MARTIN W. ALBERT, Esq.,
Attorney for Defendant

THE COURT: I understand this is a motion to suppress. You may proceed, Miss Gold.

MS.GOLD: Your Honor, do you want me to call the witnesses?

THE COURT: You call the witnesses. Then I will give the defense an opportunity to cross examine them or do what they want.

MS. GOLD: The government calls Officer Feis.

MR. ALBERT: Judge, before we proceed there is certain disocery material that I have not received.

THE COURT: I'd rather hear the motion, and I will get to the discovery material.

MR.ALBERT: Judge, pertaining to this hearing.

THE COURT: You have had all day to work that out. Is that what you are looking for?

MR. ALBERT: Yes, your Honor.

THE COURT: All right.

J O H N F E I S, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. GOLD:

Q Good after, Officer Feis.

Would you tell us how you are employed?

A I am a police officer for the New York City

2 Police Department.

3 Q What precinct are you assigned to?

4 A 120th Precinct in Staten Island.

5 Q On September 1st of 1976 were you on duty on
6 that date?

7 A Yes, I was.

8 Q Would you tell us what, if anything, occurred?

9 A On that particular day I was assigned to
10 Sector Henry Ida, 120th Precinct. I was working 7:30 a.m.
11 to 3:30 p.m. At approximately 11 a.m. on that date we were
12 called into the station house and our lieutenant told
13 us that it was --

14 MR. ALBERT: Objection.

15 THE COURT: Don't tell us what the lieutenant
16 said. Tell us what you did after the lieutenant spoke to
17 you.

18 A We were approached by a Mr. John Ciaravino,
19 who stated that his wife --

20 MR. ALBERT: Objection, if your Honor please.

21 THE COURT: I will allow that. You can tell us
22 what John Ciaravino said.

23 A He stated that his wife had been raped the
24 previous Sunday, and the two gentlemen who had raped his
25 wife were in the park on Bay Street and Victory Boulevard.

1 elbr

2 And he also told us that his wife was outside in the car.

3 So from the station house we went down the front steps

4 and I went over to the wife and I spoke to her and she

5 stated that she was raped on that previous Sunday, and that

6 the two males were in the park.

7 So we told them to follow us down to the park
8 in their vehicle.

9 THE COURT: This was the lady and her hus-
10 band?

11 THE WITNESS: Right. They were in their own
12 private vehicle. We drove down in a radio car. As we
13 got to the park we pulled up on the side of the park,
14 I got out of the radiocar and I asked the complainant,
15 could she identify the males who she stated raped her.
16 So she pointed to two males that were in the park.

17 THE COURT: Where were they? You say they
18 were in the park.

19 THE WITNESS: One male was sitting on a bench and
20 the other male was standing, speaking to a female.

21 THE COURT: Near the same bench? How far
22 apart were they?

23 THE WITNESS: They were about three benches
24 apart.

25 THE COURT: Then what did you do?

1 elbr

Feis-direct

5

2 THE WITNESS: From there, after she told us who
3 the two gentlemen were, we approached them and --

4 THE COURT: We, being how many of you?

5 Two of you?

6 THE WITNESS: Yes, sir. Me and my partner.

7 THE COURT: What was his name?

8 THE WITNESS: Officer O'Reilly.

9 THE COURT: Tell us what you did and what you
10 observed him doing.

11 THE WITNESS: I approached the gentleman who was
12 sitting on the bench and my partner approached Mr. Moultrie,
13 and we explained to them that the woman had said that she had
14 been raped the previous week and they were the two guys.

15 From there we took them back by the car where the
16 complainant and I asked the complainant were these the two
17 gentlemen, and she stated it was the two gentlemen.

18 So from there we placed them under arrest and
19 brought them to the 120th Precinct.

20 THE COURT: Where is the precinct located,
21 sir?

22 THE WITNESS: 78 Richmond Terrace, Staten
23 Island.

24 THE COURT: How far was that from the park
25 where you had arrested them?

1 elbr

Feis-direct

6

2 THE WITNESS: Approximately five blocks.

3 THE COURT: All right. Go ahead, Miss Gold.

4 MS. GOLD: I have no further questions. I think
5 that covers the entire motion by the defendant, which
6 seems to have to be up to the time of arrest.

7 THE COURT: I want to ask you some
8 questions. I am interested in, of course, in Mr.
9 Moultrie, who you told me that your partner was the one who
10 arrested them, and then you took them both before the
11 complaining witness and took them to the station.

12 THE WITNESS: Yes.

13 BY THE COURT:

14 Q What happened after you got to the station?
15 Did you have anything to do with it after that?

16 A Yes.

17 Q What happened to Mr. Moultrie after you got
18 to the station house?

19 A We got Mr. Moultrie into the station house and
20 I went downstairs and spoke to the complainant to find out
21 the whole thing about the details.

22 Q I am not interested in the New York proceed-
23 ing. I am interested in what you did with Moultrie
24 in the station house.

25 A We filled out an arrest report. After further

1 elbr
2 investigation by our detectives we had to let Mr. Moultrie
3 go. We had to void the arrest.

4 Q You had nothing further to do with Mr. Moultrie,
5 I take it, after you got to the station house other than
6 make out the arrest form, is that right?

7 A Yes, sir.

8 THE COURT: Do you have any questions you want
9 to ask?

10 MR. ALBERT: Yes, Judge.

11 CROSS EXAMINATION

12 BY MR. ALBERT:

13 Q When you spoke to Mr. Ciaravino, did you ask
14 him whether or not he had been to the police station prior
15 to this day?

16 A No, I did not.

17 Q Did you ask him whether or not his wife had
18 made any complaints to the police precinct or to a
19 police officer prior to this day?

20 A Not at that time, when he first approached me,
21 no.

22 Q As a police officer didn't you think that was
23 important to ask?

24 THE COURT: You didn't do it?

25 THE WITNESS: No, I didn't think so.

1 elbr

Feis-cross

2 Q You went out to the car, you say, where
3 Mrs. Ciaravino was, is that correct?

4 A Yes, sir.

5 Q When you went out to the car did you notice
6 how Mrs. Ciaravino was dressed?

7 A No, I didn't look.

8 Q Did you ask Mrs. Ciaravino if she had had
9 hospital or medical care as a result of this rape?

10 THE COURT: I sustain the objection to that.
11 I don't know what that's got to do with it.

12 Q Did you ask Mr. Ciaravino how long ago his
13 wife was raped?

14 A Not at that time, I didn't, no.

15 Q Didn't you consider that important?

16 THE COURT: He didn't ask. The information
17 you had been given was last Sunday, I think you testified.

18 THE WITNESS: Yes.

19 Q Did you ask Mr. Ciaravino to give you a
20 description of the two men who allegedly raped his wife?

21 A No, I did not.

22 Q Didn't you consider that important?

23 A No, because he said he could point them out in
24 the park and if they weren't there in the park then I would
25 have to ask him for a description.

Q Didn't you ask him whether they were black or white or blue or green?

A No, I did not.

Q Did you ask him what they were wearing?

A I didn't even ask him that, no.

Q He told you that there were two men in the park, is that correct?

A Yes, and his wife could identify them as being the two men that raped her, correct.

Q Did you have any conversation with Mrs. Ciaravino when you went out to the car?

A Yes, I did.

Q Specifically what did you ask her?

A I asked her, your husband told me that you were raped in the park and you could identify two males that are in the park at the present time and she says yes, they are in the park now.

Q Who else was sitting in the car with Mrs. Ciaravino?

A Nobody.

Q Officer, did you ever hear of a hospital called South Beach?

A Yes, I did.

Q What kind of a hospital is that, sir?

2 A I think psychiatric patients. It is a state
3 hospital for psychiatric patients.

4 Q Is that a hospital where they permit psychiatric
5 patients to --

6 THE COURT: I don't know if he knows that.
7 Have you taken people there, officer?

8 THE WITNESS: Yes.

9 THE COURT: Then you can answer that.

10 Q Officer, did Mrs. Ciaravino appear strange to
11 you in any way when you first spoke to her?

12 A No, she did not.

13 Q Did she at any time appear irrational when you
14 spoke to her?

15 A Not when I originally spoke to her, no.

16 Q How long a conversation did you have with Ciara-
17 vino when you first went out to the car?

18 A Maybe a minute.

19 Q Was it you who went out to the car or was it
20 your partner officer O'Reilly when you went to the car?

21 A I went to the car. Well, O'Reilly was with
22 me.

23 Q At that time or at any time prior thereto
24 did Mr. Ciaravino tell you that his wife was a patient
25 in South Beach?

1
2 A Not before we went to the park and placed
3 the defendants under arrest.

4 Q When for the first time did Mr. Ciaravino tell
5 you that his wife was a patient in South Beach Hospital?

6 A After we come back to the precinct from the
7 park.

8 Q Did he tell you how she happened to be in the
9 car? Did Mr. Ciaravino tell you how she happened to be
10 in the car and not in the hospital?

11 A She was with him.

12 THE COURT: He told you about that. The answer
13 is no. You just saw them both there in the car, is
14 that right?

15 THE WITNESS: Yes.

16 Q Was Mr. Ciaravino, if you know, a patient in
17 South Beach Hospital?

18 A I don't know.

19 Q You say that Mr. Ciaravino drove Mrs. Ciaravino
20 to the park, is that right?

21 A That is correct.

22 Q And you and your partner drove in a separate
23 car?

24 A Right.

25 Q That was a police car, I presume?

2 A That is right.

3 Q When you came to this park there were people
4 in the park, is that correct?

5 A That is correct.

6 Q Do you see one of these men who you arrested on
7 that particular day you were talking about?

8 A Do I see him?

9 Q Yes.

10 A Yes, I do, right there.

11 Q What was Mr. Moultrie doing when you first
12 saw him?

13 A Standing in the park talking to a female.

14 Q When you approached did he make any move to run
15 away?

16 A No, he did not.

17 Q There was another man also in the park who
18 you arrested, is that correct?

19 A That is correct.

20 Q And his name was Mr. Thompson?

21 A That is right.

22 Q Were you the one who placed Mr. Moultrie under
23 arrest?

24 A Yes, I did.

25 Q Will you tellus how far away Mrs. Ciaravino

1 elbr 31 Feis-cross 13
2 was from this park when she pointed out Mr. Moultrie,
3 as you say, and another man?
4 A We were on the side of the park. It is
5 approximately -- maybe 25, 30 feet, 40 feet.
6 Q And in addition to Mr. Moultrie and this other
7 man were there other people in the park?
8 A Yes, there were.
9 Q Were there other black men in the park?
10 A Yes, there were.
11 Q Mrs. Ciaravino didn't go over and point out
12 these men, did she?
13 A No, she didn't. From the vehicle she was
14 sitting in.
15 THE COURT: I think the question is, what did she
16 say about these two men when they were in the car?
17 THE WITNESS: I asked her to show me who the
18 two men were, and she says the one there sleeping on the
19 bench, which was Mr. Thompson, and the real guy there
20 talking to the woman.
21 THE COURT: She pointed them out?
22 THE WITNESS: Yes, sir.
23 THE COURT: That is what I wanted to get at.
24 Okay.
25 Q Did she say anything else to you?

1
2 A No, she did not.

3 Q Before you went out with Mrs. Ciaravino did you
4 ask Mrs. Ciaravino where she was raped?

5 A No, not at that time I didn't, no.

6 Q Did you ask her whether she was raped by
7 one man or two men or three men or four men?

8 A No, I did not.

9 Q Did you ask her any particulars concerning the
10 alleged rape?

11 A Not the original -- when I first spoke to her
12 I didn't ask her anything about the original rape.

13 THE COURT: You didn't ask her anything about these
14 original details at the time of the arrest, is that right?

15 THE WITNESS: No, sir.

16 Q Were you the one who arrested Mr. Moultrie?

17 A Yes, I was.

18 Q When you approached Mr. Moultrie did you say to
19 him, you are under arrest for raping this woman?

20 A When I first approached Mr. Moultrie?

21 Q Yes.

22 A No, I did not.

23 Q What did you say to him?

24 A I told him that there was a woman over there that
25 was complaining to us that she had been raped by him and this

1 elbr

Feis-cross

15

2 other man and I'd like him to accompany us to the radio
3 car. And he came with us by the car and that is when she
4 pointed him out as being one of the two men.

5 Q Officer didn't you consider it being peculiar
6 that a woman comes to you and tells you she was raped
7 and doesn't tell you about any medical treatment she may
8 have had?

9 MS. GOLD: Objection, your Honor.

10 THE COURT: I think I will sustain the objection
11 on that.

12 Q Officer, didn't you consider it peculiar that
13 this woman had not made any previous complaints concerning
14 this rape, this alleged rape?

15 MR. GOLD: Objection, your Honor.

16 THE COURT: I am going to sustain the objection.
17 You first knew about this that particular day, isn't that
18 correct?

19 THE WITNESS: Yes, sir.

20 THE COURT: And you learned about it when the
21 lady's husband came to the station and asked you to go out?

22 THE WITNESS: Yes, sir.

23 THE COURT: That's the first time you knew
24 anything?

25 THE WITNESS: Right.

1 elbr.

2 Q Officer, how long have you been a police of-
3 ficer?

4 A It will be 14 years in June.

5 Q When somebody comes to you and makes a co-
6 plaint, dont you ask them particulars?

7 A Not if it necessitates urgency. If there is
8 something where you have to do something at that particular
9 time, you do it and investigate later. If it is something
10 where you could investigate and make an arrest later on,
11 then you go ahead and do it. But she told us that they
12 were in the park, so we had to go at that particular
13 moment. I didn't have time to question her about the
14 whole particular rape.

15 Q Officer, you are able to size up individuals,
16 isn't that part of your duties?

17 A Definitely.

18 Q When you looked at this woman did you observe
19 that there was something wrong with her mentally?

20 A I don't think you could observe if somebody
21 is--

22 THE COURT: Don't tell us whether you could.
23 You say when you looked that day when she pointed at these
24 people, it didn't strike you as anything?

25 THE WITNESS: No, sir.

elbr

Feis-cross

17

Q Officer, did you check in the police precinct whether or not this woman had been to your precinct and had made previous complaints concerning alleged rapes?

A Did I? No.

Q Did you ever see this woman before?

A Never saw her in my life.

Q Never saw her in your life?

A No, sir.

Q When you approached Mr. Moultrie did you take him immediately into custody?

A Did I take him immediately into custody?

Q Yes.

A No, I asked him to come over to the radio car.

Q When you approached Mr. Moultrie was he free to leave?

THE COURT: I think the officer has answered. He said he asked him to come over to the radio car and when he came over to the radio car, that is when you say this lady identified him?

THE WITNESS: Yes, I asked her a second time, is this the man that you say raped you, and she said that's him.

Q Officer, when you asked this man to come over to this car, at that time could this defendant have left

1 voluntarily or of his own free will?

2 MS. GOLD: I object.

3 THE COURT: I sustain the objection to that.

4 He didn't leave. He went over with you, is that right?

5 THE WITNESS: Yes, sir.

6 THE COURT: I will sustain the objection to
7 that.

8 Q But if you wanted to leave --

9 THE COURT: No, I sustain the objection.

10 When he did go over with you was it at that time that you
11 said to him, "You are under arrest"?

12 A After the woman pointed him out?

13 Q Yes.

14 A Definitely, yes.

15 Q You said he was under arrest?

16 A Right.

17 Q Did you put the cuffs on him at that time?

18 A No, I did not.

19 Q Was he free to leave at that time?

20 A No, he was not.

21 Q At any time did this defendant make any efforts
22 to escape or to run away from you?

23 A No, he did not.

24 Q Did you say anything else to him after he
25

1 elbr

2 went over with you to this car where this lady was and
3 he was identified?

4 A No, I did not.

5 Q Did you tell him anything about his right at that
6 time?

7 A In the station house I did.

8 THE COURT: When was that, Officer? You say you
9 put him in your car and took him to the station?

10 THE WITNESS: Right.

11 THE COURT: Then when did you give him his
12 rights?

13 THE WITNESS: When we were filling out the arrest
14 reports.

15 THE COURT: That would have been how long after
16 you arrived at the station house, if you recall?

17 THE WITNESS: I brought them inside and I put him
18 upstairs. WE have like a little cell upstairs. Then
19 I went down and spoke to the complainant and her husband
20 and I called the detectives and by the time -- figure maybe
21 about a half hour, 45 minutes.

22 Q Officer, did you subsequently learn that this
23 woman, this Mrs. Ciaravino was an inmate in South Beach
24 Hospital?

25 A She is not an inmate, she is an out-patient.

elbr

Feis-cross

20

Q Did you subsequently learn that this woman was not completely mentally sound?

MS. GOLD: Objection, your Honor.

THE COURT: I am going to sustain the objection to that. I don't know whether the officer or I would know what the answer to that is.

Q Did you find out how long she had been an out-patient in South Beach Hospital?

A No, I did not.

Q You didn't ask her husband that question?

A No, I didn't.

Q Did there come a time that you searched the defendant, is that correct?

A I didn't search him. My partner did.

Q Did he search him in your presence?

A Yes, he did.

Q Did he search him or did he pat him down? Do you know what he did?

A He patted him down.

THE COURT: When did that happen in relation to the time he came to the station house?

THE WITNESS: That was on the streets.

THE COURT: He did that on the street?

THE WITNESS: Yes, sir.

1 elbr

Feis-cross

21

2 THE COURT: Before arriving at the station
3 house?

4 THE WITNESS: Yes, sir.

5 THE COURT: In the park?

6 THE WITNESS: Right, sir.

7 Q He patted him down?

8 A Yes, sir.

9 Q He didn't put his hand in his pockets or any-
10 thing?

11 A No, he didn't.

12 Q This was all done in your presence?

13 A Right.

14 Q And at that time none of the rights were
15 read to this defendant?

16 A No.

17 MR. ALBERT: No further questions, your Honor.

18 THE COURT: Any other questions?

19 MS. GOLD: Yes, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. GOLD:

22 Q Was it after the arrest that Mr. Moultrie was
23 patted down by your partner, as you testified? Was that
24 after he was placed under arrest by the police car?

25 A Actually, after we had went over to Moultrie at

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Feis-redirect-recross

22

2 the beginning, he had a jacket over his pocket, and
3 Officer O'Reilly patted the jacket. And inside the pocket
4 was the 34 checks -- what was it, the welfare.

5 THE COURT: When did this happen?

6 THE WITNESS: That is when we first went into
7 the park.

8 THE COURT: That was before you took him to
9 the radio car?

10 THE WITNESS: Right. That is when we asked him
11 to come to the radio car, and as we were going over, his
12 partner had hit his jacket pocket.

13 MS. GOLD: No further questions, your
14 Honor.

15 RECROSS EXAMINATION

16 BY MR. ALBERT:

17 Q That was before you made any arrest or anything
18 like that?

19 THE WITNESS: That was before we took him over
20 to the radio car.

21 Q That was before you made any arrest?

22 A That is right.

23 Q You patted him down and you felt his --

24 A I didn't. My partner did.

25 Q And he also felt the check in there, is that

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2 correct?

3 A Right.

4 Q And he took out the checks, is that correct?

5 A Right.

6 THE COURT: All right. I take it there are no
7 further questions.

8 Thank you, officer, you are excused.

9 (Witness excused.)

10 MS. GOLD: May we have a moment, your Honor?

11 (Pause.)

12 MS. GOLD: The government rests, your Honor.

13 MR. ALBERT: If your Honor please, I respectfully
14 move to express --

15 THE COURT: Before you get to that, are you
16 going to put on any testimony?

17 MR. ALBERT: No, your Honor, the defense rests
18 also.

19 THE COURT: You want to make your motion to
20 suppress?

21 MR. ALBERT: Yes, your Honor, I do.

22 THE COURT: Do you want to tell me why?

23 MR. ALBERT: If your Honor please, I respect-
24 fully move to suppress the food coupons and any other evidence
25 which was found on this defendant's possession.

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2 In the first instance, if your Honor please,
3 this defendant was not under arrest at the time that a
4 search was conducted, and this was a search which was
5 admitted by the police officer himself where he stated that
6 his partner was the one who patted him down and actually searched
7 him in his presence.

8 And I respectfully submit that was a violation
9 of the Fourth Amendment of the Constitution of the
10 United States, and in view of that, if your Honor please,
11 I would respectfully submit that that evidence, namely, those
12 food coupons or whatever was found on his person at that
13 time should be suppressed.

14 THE COURT: What does the government have to
15 say?

16 MS. GOLD: Your Honor, I don't know if defense
17 counsel is abandoning the probable cause for his arrest
18 aspect.

19 THE COURT: I think the point is that the
20 search was made prior to the arrest.

21 MR. ALBERT: That is correct, your Honor.

22 THE COURT: It isn't a question whether it's
23 incident, because it was prior to the arrest.

24 MS. GOLD: The victim, the complainant had al-
25 ready identified both of the men in the park, had pointed

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2 them out, described them, one standing talking to the
3 woman, the tall one, and the other one sitting on the park
4 bench. At the time the officers went over to the defendants
5 and asked them to come over to the car, I think it was
6 perfectly proper for them to conduct a limited patdown of it
7 at that time as part of the arrest.

8 THE COURT: I think the point he would make
9 is that at that point the officer wasn't sure whether it was
10 the right person to arrest because he brought him over to the
11 car for further identification. Does that make any
12 difference to you?

13 MS. GOLD: Yes, your Honor. I think that
14 is why no thorough search was conducted and the officers
15 limited themselves to a pat down of his outer clothing, his
16 jacket, as he described it, that was flung over his
17 shoulder. I think this is perfectly proper according to
18 Perry v. Ohio.

19 THE COURT: You didn't cite that, did you?

20 MS. GOLD: Your Honor, that wasn't the issue at
21 the time.

22 THE COURT: This is the issue that throws me
23 off. What I'd like you to do, it is a little different
24 from the facts as I read them in the brief, I'd like to
25 give an opportunity to Mr. Albert and the government both

2 to give me a very brief memorandum in support of their
3 respective contentions. Could you get it to me some-
4 time tomorrow?

5 MS. GOLD: Yes, your Honor.

6 MR. ALBERT: Judge, I'd appreciate having a few
7 days because tomorrow I have to be at another court.

8 THE COURT: When is this case set down for
9 trial?

10 MS. GOLD: That is a question, your Honor.
11 The government called and asked if it would be possible to
12 put it off for a week.

13 THE COURT: After March 1st?

14 MS. GOLD Yes, your Honor.

15 THE COURT: How long will it take to try this
16 case, assuming it goes to trial?

17 MS. GOLD: A day to two days.

18 THE COURT: Would you think that is about right,
19 Mr. Albert?

20 MR. ALBERT: I think I would agree.

21 THE COURT: Okay. Would you have any objection
22 to putting this down for March 8th for trial?

23 MR. ALBERT: No, your Honor.

24 THE COURT: Let's put it down for March 8th,
25 that will give you a little more time if you give me a

brief on your motion to suppress, which I want to decide before the trial, obviously. How soon could you get it?

MR. ALBERT: If your Honor at least can give me until Monday or Tuesday to get it in to you.

THE COURT: Next one, which would be the 21st -- that is Washington's Birthday. How about the 22nd?

MR. ALBERT: Do I have to get it down here in the morning or can I get it in the afternoon because I am going to be in Mineola that morning? That is the problem of a private practitioner, as you well know. How about on the 23rd, Judge? I will get it in to you in the morning.

THE COURT: All right. The morning of the 23rd at the latest, and serve it on the government. And I'd like the government to get me a little memorandum at the same time with service on the defendant's attorney and if I want any more I will let you know. I will proceed on that basis.

(Time noted: 3:45 p.m.)

EXCERPT FROM MINUTES, DATED APRIL 1, 1977

1 jkhh

(REBUTTAL SUMMATION).

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2 that your memory is maybe not only as good as mine but
3 perhaps better, because you know you ladies and gentlemen
4 have been able to sit here and to concentrate on the
5 evidence. I had to concentrate on the evidence and concentrate
6 on what I am going to do on cross-examination, and listen
7 very carefully to the questions that Mr. Diskant was
8 saying and also the rulings made by the Court. But you ladies
9 and gentlemen were able to concentrate solely on the evidence
10 and I know that your recollection must be better than mine.
11 So I am not going, as you notice, into too many facts here.
12 Very little facts. I am just trying to give you some food
13 for thought, to try to reason this case out. I say to
14 you this, ladies and gentlemen: that after analyzing all
15 the evidence in this case and listening to his Honor's
16 charge on the law, and then the rebuttal made by the United
17 States Attorney, that there should be a reasonable doubt
18 in your mind, and I am asking you ladies and gentlemen to
19 bring in a verdict of not guilty. Thank you very much.

20 THE COURT: All right, Mr. Diskant.

21 MR. DISKANT: Ladies and gentlemen, Mr. Albert
22 said he was not going into the facts in too much detail; that
23 is probably a wise caution on his part, because the facts
24 are overwhelming against this defendant. According to Mr.
25 Albert, the government witnesses are all lying. This is a

2 frameup. J.C. Bennett is lying when he says that is the
3 man he knew as Tony. Alexander Dantzler is lying when
4 he said that is the man he knew as Midnight. Angel
5 Rodriguez is lying when he says Moultrie took food stamp
6 coupons.

7 In addition, Mr. Albert says the government's
8 fingerprint expert is confused, or if he had seen other
9 fingerprints there would have been some different result.
10 I don't quite understand his point. But let's think about
11 this a little bit.

12 Alexander Dantzler was not involved in any of
13 the crimes. He was sitting there as a receptionist at Borden's
14 office. He saw what happened and he told us about it.
15 Angel Rodriguez was not involved in any crimes. He worked
16 in the Post Office, he saw what he thought was theft
17 going on, he reported it, he came in and testified about it.
18 What possible motive could these witnesses, these ordinary
19 citizens have for coming in and perjuring themselves before
20 you?

21 Alexander Dantzler picked him out in court.
22 Is he lying to you? Is he willing to stand a perjury indict-
23 ment for lying to you? For what? What is he getting out of
24 this? Nothing. He's come forward, and we submit he has
25 told the truth.

Angel Rodriguez, on one hand Mr. Albert seems to think he is telling the truth, he says it is more likely his client would steal three letters than 34; on the other hand he says, it is inconceivable.

MR. ALBERT: I must object. That is not what I said.

THE COURT: It is the jury's recollection anyway.

MR. ALBERT: All right.

MR. DISKANT: Think about what he said, but think about the evidence, more importantly.

And Mr. Albert says any day you could walk out somewhere with a magazine and open it up and find a wad, a three-quarter of an inch wad of envelopes inside and not know it at all until you opened it. How thick is Ebony magazine? Is it a book? Is it a box? It is a magazine. Where could they be? Wouldn't some fall out as he was walking with them? In what possible way could these envelopes fit inside that magazine and not be noticed? Fingerprints: Mr. Albert says the fingerprint expert didn't look for Mr. Borden's fingerprints, he didn't look for Mr. Parker's fingerprints, he didn't look for J.C. Bennett's fingerprints. Those gentlemen are not on trial before you today. Those fingerprints may be there; so what. Michael Moultrie's fingerprints were there. Michael Moultrie

is on trial before you today and we submit that the fingerprint evidence is devastating.

There is no way his fingerprints could get on those checks other than that he put them there.

And J.C. Bennett, the bottom of the barrel Mr. Albert says. Who deals in stolen checks? Could we bring in a college president or a priest to point the finger at Mr. Moultrie and say, I was dealing in stolen checks with Mr. Moultrie? Of course not. J.C. Bennett is a crook. He's been convicted. He pled guilty. Justice was done to J.C. Bennett. The man on trial before you, again, is Michael Moultrie. What motive does Bennett have to lie? He's already been sentenced. He's not getting anything from us any more. There is nothing. But there is one thing: we told him, and he testified to it, that if he lied to you today, he'd be indicted for perjury. And he came in here and we submit that you can find he told you the truth. He knew Michael Moultrie as Tony. Michael Moultrie didn't want him to know who he was. Alexander Dantzler knew him as Midnight. And today he comes into court, having changed his appearance from the time they knew him. He wore glasses when they knew him. He had hair when they knew him. And here he is, bald, no glasses, hoping perhaps that they wouldn't recognize him.

Again, it failed, ladies and gentlemen; they did, and we believe and we submit that you can find that they testified truthfully.

Ladies and gentlemen, there is no more solemn duty, and it is not a pleasant duty, sitting in judgment on a fellow citizen. That is your duty. You were sworn, and you took an oath as jurors, to apply the evidence, the facts, the law as the Judge gives you, to render an honest verdict.

We submit the only way to apply this evidence, these facts, this case, is to find Michael Moultrie guilty of the crimes charged beyond a reasonable doubt.

Thank you for your attention.

MR. ALBERT: Excuse me, your Honor, may I respectfully object to it?

THE COURT: No. Ladies and gentlemen, you have heard the summations now, and we will now take a luncheon recess, and I suggest we return at 1:45 and you will hear my charge. You are excused now until 1:45. Don't discuss the case, please don't discuss it amongst each other or with anyone else in the meantime.

(Jury left the courtroom.)

THE COURT: Gentlemen, I was wondering one thing about the indictment here. Have you got a clean copy of

this indictment?

MR. DISKANT: Yes, I do, your Honor.

THE COURT: I don't need it now but I will need it before I charge. It is a problem keeping track of all these counts, and I think for that purpose, I would like the jury to have a clean copy of the indictment, but purely for that purpose, and I will instruct them that it is merely a charge and it is not evidence at all. I think that is better for them to keep track of it, because it does go on for quite a while.

MR. ALBERT: Judge, may I just respectfully, for the record, note an objection to the Assistant United States Attorneys' rebuttal statements to the jury?

THE COURT: Yes.

MR. ALBERT: Thank you.

THE COURT: Do you want to give any reason for it?

MR. ALBERT: Well, if your Honor please, I felt that Mr. Diskant was bolstering some of his client's testimony.

THE COURT: Okay.

MR. ALBERT: That is the purpose of my objection.

THE COURT: Okay. You have made it on the record. Thank you.

(Note from juror number 9 who was excused

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marked Court's Exhibit 2.)

THE COURT: I will see you at a quarter of 2,
gentlemen.

(Recess for lunch.)

1 jkhh EXCERPT FROM MINUTES, DATED APRIL 1, 1977
2 (CHARGE TO JURY).

3 AFTERNOON SESSION

4 1:45 P.M.

5 (Jury present.)

6 THE COURT: Madam forelady, as you are, Mrs.
7 Delaney, by virtue of occupying the first chair, and ladies
8 and gentlemen of the jury, first of all, I'd like to join
9 with the lawyers in thanking each of you for the care
10 and attention which you have shown throughout this short
11 trial and tell you I appreciate the sacrifices I know each
12 of you has been called upon to make so that you could
13 serve in this very important capacity of being on a federal
14 jury, and I am sure you will bear with me and give me
15 the same degree of attention that you have shown throughout
16 the trial so that you will understand the principles of law
17 which apply to this case.

18 Remember, I told you, when we started, that
19 it was the jury's duty here to weigh the evidence here
20 calmly and dispassionately without any sympathy and without
21 any prejudice with respect to either the government or to
22 this defendant Moultrie.

23 I told you that everyone appearing before this
24 bar of justice is entitled to a fair and an impartial
25 trial, regardless of his occupation or station in life.

And your verdict here must be based solely on

the testimony which you heard from that witness chair,
and on the exhibits which have been received in evidence,
and on nothing else at all.

I told you also at the outset that it was
exclusively my function to instruct the jury as to the law
which applies here, and on these matters you must accept
my instructions. But you the jury are the sole judges of the
facts. It is not what a lawyer says about the facts or
what I might say. It is what the jury remember and
decide.

I also told you at the outset that during the
course of the trial I would have a conversation with one
or other of the lawyers. Indeed I did. I sustained ob-
jections and overruled them. I told you then and I will
repeat now, pay no attention to all of this. And above
all, ladies and gentlemen, draw no inference from anything
I may have said during this trial that might lead you to
think I favor one side or the other here, for of course I
do not. That is not my function. That is the jury's function.

Now, throughout my charge, ladies and gentlemen,
I will instruct you that you may not convict the defendant,
Mr. Moultrie, unless and until you are satisfied that
the government has proved each element of the crimes charged
beyond a reasonable doubt. And what do we mean by beyond

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a reasonable doubt? Well, of course, the words suggest the answer. It is a doubt based on reason. It is a doubt which a reasonable man or woman might err in. But a reasonable doubt is not a fanciful doubt; it is not an imaginative doubt. It is not a doubt that a juror might conjure up to avoid performing an unpleasant task. It is a reasonable doubt. It is a doubt which arises in a juror's mind because of something in the evidence in the case or the lack of evidence in the case. It is the kind of doubt which would cause a reasonable man or woman in a more serious and important matter in his or her own private life to hesitate to act, and the burden is on the government to prove the guilt of the defendant beyond a reasonable doubt.

The government need not prove the defendant's guilt beyond all possible doubt. If that were the rule, few people, however guilty they might be, would ever be convicted.

In this world of ours, it is practically impossible for one to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to mathematical precision or to mathematical certainty, so the law is that the government must prove the guilt of the defendant beyond a reasonable doubt, not all possible

doubt.

When I review the indictment with you, ladies and gentlemen, I remind you as I did at the outset that the indictment is merely the way the government brings into court individuals who it claims have violated the law.

The indictment is not any evidence at all of the guilt of this defendant, and the indictment is not to detract in any degree from the presumption of innocence with which the law surrounds Mr. Moultrie until his guilt is proven, and this presumption of innocence remains with Mr. Moultrie throughout the trial, and applies to your consideration of each of the essential elements of the crimes charged, and this presumption of innocence remains unless and until the jury find that the government has proven Mr. Moultrie's guilt beyond a reasonable doubt.

Mr. Moultrie has pled not guilty here and in so doing he has put at issue every material element of the crimes charged, and this burden has remained on the government throughout the case, and if the government has not proved to you that the defendant is guilty beyond a reasonable doubt, then of course you must find the defendant not guilty.

Before lunch the lawyers reviewed the evidence

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with you, and I don't intend to review it all again. It's been a short trial. I am sure you remember it. During the course of my charge, I may mention what I understand to be some of the contentions of the parties, but there again, that is purely to help you with your recollection, since it is your recollection that control.

Now the statute involved here, ladies and gentlemen, is Section 1708 of Title 18 of the United States Code, which provides, to the extent relevant here, that whoever unlawfully has in his possession any letter or any article or thing contained therein which has been stolen or taken from the mails, knowing the same to have been stolen, is guilty of a crime.

And then the indictment,--which I repeat is only a charge -- the indictment states, in Count 1:

The Grand Jury charges: That on or about the 20th day of August, 1976, in the Southern District of New York, Michael Moultrie, also known as Midnight, the defendant, did unlawfully, wilfully and knowingly have in his possession the following New York City Social Services check, which had been stolen, taken, embezzled and abstracted from out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted: and then it lists a check

addressed to Ramos Luz -- I think she testified as Luz Ramos, I think the name is reversed, 1161 Hoe Avenue, Bronx, check dated August 16, 1976, in the amount of \$122.

As I recall it, this is Exhibit 4, this check, is that correct?

MR. DISKANT: Yes.

THE COURT: And the government I think contends here, on the basis of the testimony of Mr. Dantzler, that this was one of these checks, you remember, in the office up there where he was serving as receptionist, and I think he testified there was a conversation, he saw the defendant, and saw this man -- is that the one --

MR. DISKANT: Mr. Borden, your Honor.

THE COURT: Mr. Borden, that's right, and you remember the checks were there; that is what the government contends. The defendant of course denies that he had the check at any time. Then there was the testimony I think of Mr. Dotson to the effect that he found a latent fingerprint of Mr. Moultrie on that check.

And then count number 2 is exactly the same as I read to you in Count No. 1 but this involves a check payable to Providencia Cruz, who I believe also testified here this morning, a check dated August 19, 1976, in the amount of \$181.05.

And I think, as I recall the testimony on this one, Mr. Bennett testified that this was one of the checks which was given to him by the defendant. They were both talking about, you remember, they were going to try to get some money for these checks one way or another. And the defendant denies of course that he ever had this check.

And then the remaining counts, Counts 3 through 29 involves what the lawyers call these ATPs, these authorizations to purchase food coupons; all these counts are exactly alike, and they relate to -- remember Patrolman O'Reilly testifying that when he arrested the defendant in Staten Island, he found a package, all these things, which the government contends, on the basis of the evidence, had been stolen from the mails, and the defendant denies this. As I recall it, the defendant contends that this was inadvertent. They might have been in this folded magazine. I think he talked about the Ebony magazine. He didn't know they were there, he just took the magazine from the Post Office, and it was found by Mr. O'Reilly.

These counts are in the same language as the others. I will read it to you:

On or about the 1st day of September, 1976, and I think Officer O'Reilly testified September 1, 1976, Michael Moultrie, the defendant, did unlawfully, wilfully,

and knowingly have in his possession the contents of certain letters addressed as follows, which had been stolen, taken, embezzled and abstracted from and out of an authorized depository for mail, knowing the same to have been stolen, taken, embezzled and abstracted.

Then each of these counts has a different name and these appear, I believe, on Exhibits 8 through 34, and each count is a different charge, it is a different crime, but it is all the same, it is all in this package, just the question of the names that are on each item.

Now, before you can find the defendant, Mr. Moultrie, guilty on any of these counts, whether the check counts or the ATP counts, the government must prove to you beyond a reasonable doubt the following four elements:

First, that on or about the date in question in the indictment, defendant had possession of the Welfare check or the ATP described in that particular count.

Second, that the check or the ATP had been stolen from the mails. Here you will recall, of course there was a stipulation that these things had been mailed, and then there was testimony of Mrs. Ramos and Mrs. Cruz that they never received the checks.

Third, that the defendant, Mr. Moultrie, knew that these checks or the ATPs, as the case may be, had been

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2 stolen. The government need not prove he knew they had
3 been stolen from the mails. The government has to prove
4 that he knew they had been stolen.

5 And fourth, and this is a vital element here,
6 that the defendant possessed these checks wilfully,
7 knowingly and unlawfully; that he had a criminal intent
8 here, that he took these things and hoped that he might
9 sell them or do something with them.

10 Taking that last element, the fourth element,
11 which is really did he have the criminal intent here,
12 that is really what it means, did Mr. Moultrie here act
13 wilfully, knowingly, unlawfully? Well, an act is done
14 knowingly and wilfully if it is done voluntarily
15 and purposely. An act is done wilfully, knowingly and
16 unlawfully if it is done with an evil motive or purpose,
17 such as trying to sell an item which had been stolen
18 from the mails, like a check or anything else.

19 But, an act is not done knowingly, wilfully
20 and unlawfully if it is done by mistake, by carelessness
21 or by other innocent reason.

22 Obviously it is impossible to prove exactly what
23 Mr. Moultrie knew or what his intentions were on these
24 occasions. We can't look into his mind and see what knowledge
25 he had at the time to determine his specific intentions.

1 But these are matters which you the jury can determine
2 from a careful consideration of the facts and circumstances
3 brought out during the trial. The knowledge and intentions,
4 the wilfulness, if you will, of a defendant may only be
5 understood when put in context with the circumstances
6 surrounding his acts, and the inferences which you the
7 jury find may be reasonably drawn therefrom.

8
9 You might ask yourself whether these transactions
10 were normal or abnormal, whether you think they were open
11 or surreptitious, whether you think the background of the
12 defendant made it likely or unlikely that he knew what
13 he was doing, whether you think the defendant had a motive,
14 whether he had a financial interest in the outcome. These
15 are the kinds of questions, ladies and gentlemen, of
16 course not the only ones, which you should ask yourselves
17 to determine whether or not Mr. Moultrie here had criminal
18 intent. And of course I don't suggest any answers to these
19 questions. After all, in your own daily affairs, you are
20 continually called upon to use your own common sense
21 and experience to determine from the actions or statements
22 of others what their real intentions and purposes are,
23 and please do this in determining the knowledge and
24 intentions of Mr. Moultrie.

25 Now as I recall the evidence, there were other

checks here which are not the subject of these charges, and the government contends that he also had these checks unlawfully, illegally, that they had been stolen from the mails, which the defendant of course denies. If you find he did, of course, that is a factor you might consider in connection with determining his knowledge and intent with respect to the charges that are made in the indictment.

And then you will recall there was some testimony, I think it was Inspector Yost, who testified about a certain statements made by Mr. Moultrie, and which was signed in his presence, I believe on September 1st, in the course of which, as I recall it, is that exhibit, what exhibit is that statement, do you remember?

MR. DISKANT: 43, your Honor.

THE COURT: Exhibit 43, all right. As I recall it, in that statement, the defendant said that he didn't know he had these things, he picked up a magazine in the Post Office, and it turned out that they were in the magazine.

Now the government contends that his statement to Inspector Yost was false, and of course, the defendant denies that. So in considering this statement, ladies and gentlemen, if you find that the defendant did make this statement to Inspector Yost, and if you find that his

statement was false, you may consider that as circumstantial evidence of a guilty conscience on his part. You may consider it as having independent probatory force on the issue of whether or not the defendant had criminal intent on these occasions.

In considering the evidence at this trial, ladies and gentlemen, remember that the law recognizes two types of evidence, direct evidence and circumstantial evidence. Direct evidence is testimony by a witness of what he saw and what he did. Circumstantial evidence consists of circumstances from which the jury may infer by a process of reasoning certain facts which are sought to be established as true.

I suppose the classic example of circumstantial evidence is if you were to go home to your house or your apartment one evening, in the rain, and you walked in, and somebody was looking at the TV in the apartment, and your hat was wet, your raincoat was wet, the person looks at you and says, "Gee, it's raining outside." Now they haven't looked outside. They have looked at you. And by a process of reasoning they conclude that it is raining outside.

That is circumstantial evidence. And there is certainly a good deal of circumstantial evidence in this

case.

And direct evidence and circumstantial evidence are both good evidence and no greater degree of certainty is required when it is circumstantial than when it is direct. But in either case the government must prove the defendant's guilt beyond a reasonable doubt.

And different inferences may be drawn from the evidence. The government may ask you to draw one set of inferences, the defendant asks you to draw another. But it is for you the jury alone to decide what inferences you will draw from the evidence, and what facts you find to have been proved.

Mr. Albert, in his summation, made some reference to the fact that there was no testimony from Mr. Borden and Mr. Parker. I think he mentioned them specifically. There may have been others. I think Mr. Albert said they should have been called at this trial. Well, as far as the record indicates, I suppose these men could have been called by either the government or by the defendant. But if you find that they or any potential witness was available to both the government and the defendant and both sides failed to call that witness, you may conclude that the testimony of that witness might have been unfavorable to the government, or it might have been unfavorable to the

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2 defendant. But it is equally within your discretion, ladies
3 and gentlemen, to draw no inference at all from the failure
4 of either side to call such witnesses as Mr. Borden and
5 Mr. Parker.

6 You ladies and gentlemen are the exclusive
7 judges of the credibility of the several witnesses who
8 appeared before you. How do you determine their credibility?
9 You saw them testify. You heard their testimony discussed
10 by the lawyers in their summation. And of course you
11 subject the testimony of all witnesses to the same
12 standards, whether they're called by the government or
13 whether they were called by -- and here none were called
14 by the defendant -- but anyway, all the witnesses are
15 subject to the same standards, and it is the quality of
16 the testimony, not the quantity, the quality of the testimony
17 which you think represented a true picture of what happened
18 here.

19 And in considering the credibility of these
20 witnesses, ladies and gentlemen, please use your plain
21 everyday common sense. You saw them testify. How did they
22 impress you? Did you think they were testifying candidly,
23 frankly and fairly? So apply your common sense and
24 experience just as you do when you were called upon to
25 determine an important matter in your own lives, when you

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2 have to decide whether you have been given a true picture
3 of a given situation. You consider, I think, the witness'
4 demeanor, you consider a witness' background, his occupation,
5 his prior criminal record, if any. You consider a witness'
6 possible bias, means of information, and the accuracy of his
7 recollection, and you consider whether you find his testimony
8 supported or whether you find it contradicted by other
9 credible testimony or circumstances.

10 You consider whether a witness has an interest
11 in testifying. Now, you heard from some of these postal
12 inspectors, Hazelwood, and some other Post Office personnel.
13 Well, these inspectors, of course, are law enforcement
14 officers. They have an interest in prosecuting people
15 whom they think have violated the law. And that of course
16 is an interest. And of course this doesn't mean that any
17 of these witnesses would color their testimony or falsify
18 it for you because they had an interest. It is merely a
19 factor for you the jury to consider.

20 Then we had Mr. Dotson, the fingerprint expert.
21 He's known in the law as an expert witness. Remember, he
22 testified about his background as a fingerprint expert,
23 and what he found in preparing these fingerprints. The
24 only difference between an expert and an ordinary witness
25 is that while an ordinary witness gives you a factual

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statement of what he saw or did, an expert witness is permitted to give you his opinion, and you remember, Mr. Dotson did give you his opinion about those fingerprints. But otherwise, you apply exactly the same standards as you do to an ordinary witness to the testimony of an expert witness.

And then you remember the testimony of Mr. Bennett. Mr. Bennett, as I recall it, said he pled guilty to taking things from the mail, or having in his possession things that had been stolen from the mail. He said he pled guilty, he had been sentenced, and he was the one who testified that Mr. Moultrie was in the group with which he was working and Mr. Bennett testified for the government, and you may consider whether he did so in the hope of some kind of favor or leniency, and his testimony should be given such value and weight as you think to be proper under all of the circumstances here.

Mr. Bennett's testimony, if you believe it, is sufficient to convict the defendant as to those transactions as to which he testified, if you believe it and it convinces you of the defendant's guilt beyond a reasonable doubt. But in considering Mr. Bennett's testimony, ladies and gentlemen, do take into account any motive you find he may have had in testifying, such as favors from the

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2 government or any other thing, and subject Mr. Bennett's
3 testimony to close and searching scrutiny.

4 Now, a witness may be discredited by contradictory
5 evidence or may be discredited if you find he wasn't telling
6 the truth, and if you find that any witness was lying
7 to you, you can just disregard all of his testimony, or
8 you can accept a part of a witness' testimony if you find
9 it reliable and you can discard the rest.

10 Mr. Moultrie did not take the stand at this trial.
11 And you must not consider this at all, and must not permit
12 this to weigh in the slightest degree against him, and
13 it should not enter into your deliberations. And the reason
14 for this, of course, is as I have told you: the government
15 here has the burden of proving Mr. Moultrie's guilt beyond
16 a reasonable doubt. Mr. Moultrie is not required to prove
17 his innocence.

18 There are a number of counts in the indictment,
19 ladies and gentlemen, and as I have told you -- incidentally,
20 I will send a copy of the indictment to you in the jury
21 room, but remember, it is purely a statement of charges,
22 it is not evidence at all, but to keep track of these
23 counts -- and a separate crime is charged in each count
24 of the indictment, and each count must be considered
25 by you separately. Of course, as I mentioned to you, these

ATP counts, which are the voluminous ones, Counts 3 through 29 I think it is, all involve the same bundle of documents which Inspector O'Reilly testified about.

And of course the fact that you find Mr. Moultrie guilty or not guilty on one count does not control your verdict on any other count.

And you will have the right to see any of the exhibits which have been received during the trial. If you'd like to see any of them, just let me know by telling the marshal.

As you deliberate, ladies and gentlemen, remember that a jury deliberation is one in which everybody expresses their views, exchanges views. And don't be afraid to change your original opinion because of pride of opinion or stubbornness or for any reason at all should you become convinced that your original view was wrong.

But on the other hand, ladies and gentlemen, never surrender your honest conviction; never do that for any reason, whether you are outnumbered or for any other reason at all, never surrender your conscientious conviction.

You will seek to arrive at a verdict here, providing you can do so reasonably and consistently with the conscientious conviction of every one of you. It is obviously important both to the government and to this

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2 defendant that this case be decided by you. Your verdict
3 in this case, this being a criminal case, must be a
4 unanimous verdict, representing the conscientious convictions
5 of all 12 of you.

6 If you find that the defendant here is not guilty,
7 you must not hesitate for any reason to render a verdict
8 of not guilty. But on the other hand, if you find that
9 the law has been violated by the defendant as charged,
10 then you must not hesitate to render a verdict of guilty
11 because of sympathy or any other reason at all. And please
12 do not consider the question of possible punishment should
13 you find the defendant guilty. The question of sentence
14 is up to the court. And is of no concern of the jury's,
15 and must not enter into your deliberations in any way,
16 and you must not allow consideration of possible punishment
17 to affect you or make you seek to avoid the performance
18 of an unpleasant task.

19 In conclusion, ladies and gentlemen, I am sure
20 that if you listen to the views of your fellow jurors
21 and you apply your common sense, you will reach a fair
22 verdict in this case. And remember that that verdict
23 must be rendered without fear, without favor, and without
24 sympathy.

25 Will counsel come forward a minute.

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(Side bar)

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THE COURT: Any exceptions?

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MR. ALBERT: No exceptions.

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MR. DISKANT: Your Honor, we request you

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instruct the jury in some more detail about the first three

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elements that you mentioned. As I understood it, most

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of the charge went to the question of wilfulness; particularly

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in light--

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THE COURT: What are you talking about?

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MR. DISKANT: I am talking about --

THE COURT: What elements?

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MR. DISKANT: --the fact, the element that it

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be stolen from the mail, it be possessed by the defendant.

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THE COURT: I covered both of those. I covered

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that. Not in as great detail as you did but I covered it.

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MR. DISKANT: With respect, your Honor, in light

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of the defense claim that it was not possessed by the

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defendant.

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THE COURT: I said he denied it. I said he denied

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possession. I covered that. Okay. All right.

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(Open court)

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THE COURT: Mr. Warwick, you have been here with

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us all this time and we are very grateful to you, but now

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that all 12 jurors are ready and able to go on, I am going

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to excuse you now and I want to thank you very much, and

wish you luck in the future. What are the instructions,
Mr. Clerk?

THE CLERK: If Mr. Warwick will report directly
back to the Central Jury Part on Monday morning at 9 o'clock.

THE COURT: Thank you, Mr. Warwick.

(Alternate excused.)

THE COURT: Thank you, ladies and gentlemen.
Do you have a clean copy of the indictment?

MR. DISKANT: Yes, your Honor.

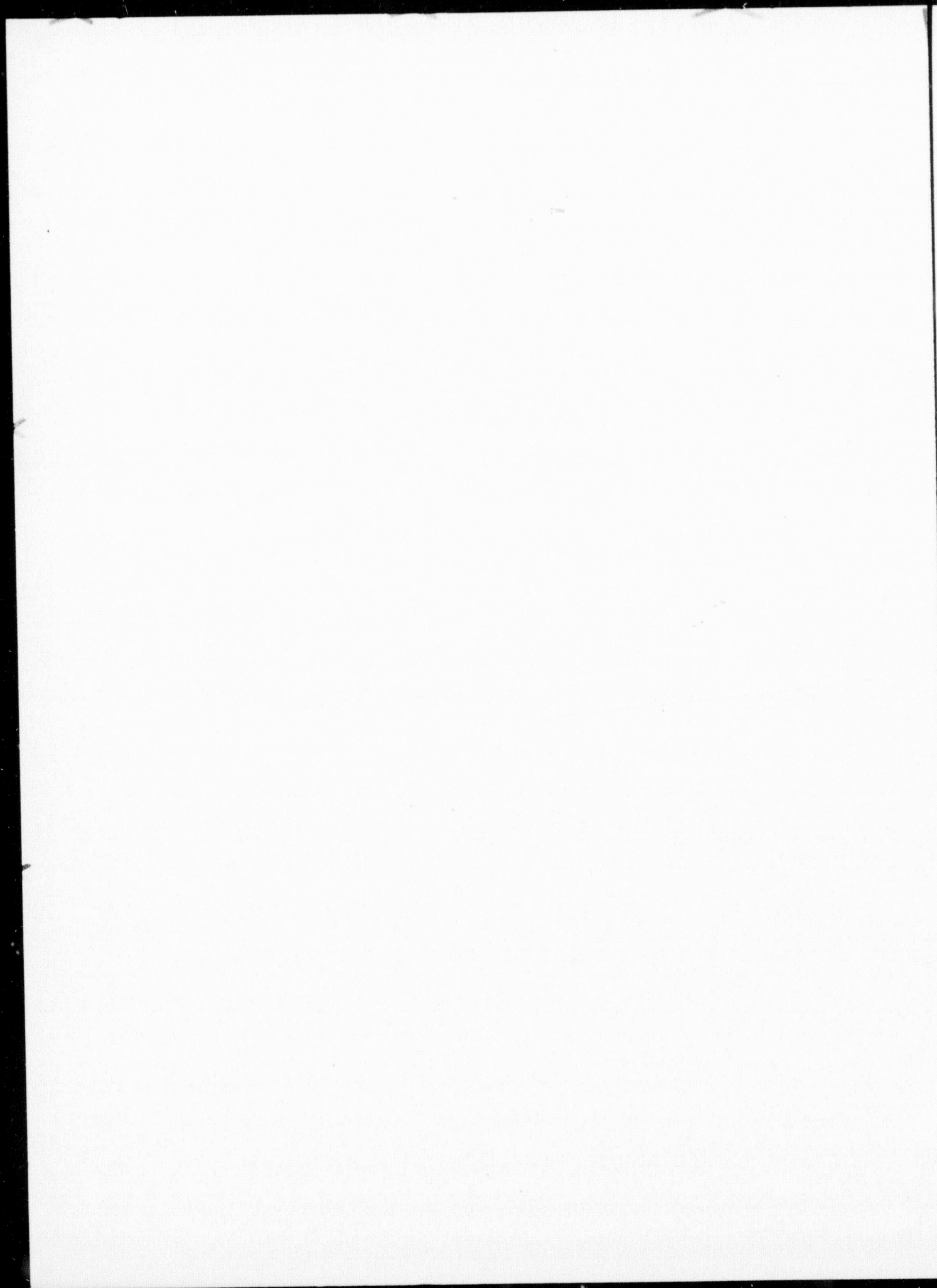
THE COURT: Mark that as an exhibit and give it
to the forelady.

(Court's Exhibit 5 handed to the forelady.)

THE FORELADY: May I ask you if there is any
format as to how we should proceed?

THE COURT: No, ma'am.

(Jury retired to deliberate at 2:25 P.M.)



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Date

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ROBERT B. FISKE JR.

AUG 4 - 1977

U. S. ATTORNEY
SO. DIST. OF N. Y.